

Before the
COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

**DISTRIBUTION OF CABLE
ROYALTY FUNDS**

**DISTRIBUTION OF SATELLITE
ROYALTY FUNDS**

**CONSOLIDATED DOCKET NO.
14-CRB-0010-CD/SD
(2010-13)**

**SETTLING DEVOTIONAL CLAIMANTS' OPPOSITION TO MULTIGROUP
CLAIMANTS' MOTION TO STRIKE SETTLING DEVOTIONAL CLAIMANTS'
MOTION TO SUPPLEMENT**

The Settling Devotional Claimants (“SDC”) oppose Multigroup Claimants’ motion to strike. The relief requested in the SDC’s motion to supplement is for the Judges “to consider the public disclosure of the information that Multigroup Claimants previously designated as Restricted” and “to consider Multigroup Claimants’ waiver of the protection of the Protective Order” through its failure to respond to the SDC’s objection to the Restricted designation within three business days, as required by the Protective Order. The SDC’s motion makes no mention of any “fraud” or “fraudulent conveyances,” which are already thoroughly addressed in earlier pleadings.

In making their argument why the Judges should consider this new evidence, the SDC presented argument as to why the new evidence would be material to the SDC’s pending Motion to De-Designate Restricted Materials (Mar. 4, 2020) and to the SDC’s Opposition to Multigroup Claimants’ Emergency Motion for Removal from Public Records and Sanctions Against SDC and Its Counsel (Mar. 27, 2020). Therefore, the SDC presented argument as to what the new evidence shows and does not show, and what bearing it should have on the Judges’ consideration of the two motions at issue. That was not improper argument on the underlying motions, nor

was it repetitive of any arguments previously made. It was proper argument on a motion to supplement with new evidence, because it bears directly on whether the Judges should consider the new evidence.

In the context of a motion for a new trial, a party seeking introduction of new evidence “must show that the evidence was not and could not by due diligence have been discovered in time to produce it at trial; that it would not be merely cumulative; and *that it would probably lead to a judgment in his favor.*” *See Carr v. District of Columbia*, 543 F.2d 917, 927 (D.C. Cir. 1976) (quoting *Philippine Nat’l Bank v. Kennedy*, 295 F.2d 544, 545 (D.C. Cir. 1961)) (emphasis added). The standard for submission of new evidence on interlocutory motions before a decision has even been rendered is necessarily lower than the standard for rehearing a matter after final judgment, but the SDC nevertheless addressed each of the “new evidence” factors, including how it should affect a decision on the merits. *See Continental Transfert Technique Limited v. Federal Government of Nigeria*, 234 F.Supp.3d 206, 208 (D.D.C. 2017) (On reconsideration of interlocutory order, declarations explaining reasons for relief requested constituted “new evidence not previously available.”). As Multigroup Claimants acknowledges, the SDC’s motion is not a sur-reply. Motion to Strike at 3. Multigroup Claimants might disagree with the SDC’s argument, but that is not a reason to strike a motion.

None of Multigroup Claimants’ arguments is germane to the question of whether the SDC’s motion to supplement should be stricken, and most are repetitive of arguments that are already fully addressed elsewhere. However, the SDC wish to respond to Multigroup Claimants’ contention that “the SDC misrepresent the content of the cited Protective Order” (Motion to Strike at 3 n. 3), which is not repetitive of earlier pleadings and which might plausibly be

germane to whether the SDC's motion to supplement should be granted (although not to whether it should be stricken).

Specifically, section V.D of the Protective Orders provides, "If a Producing Party declines to acquiesce in the requested disclosure or to agree that the information should not be classified as Restricted material, the Producing Party *shall* notify the Receiving Party or Reviewing Party in writing the reasons therefor within three (3) business days of receipt of the written notice." (Emphasis added). Contrary to Multigroup Claimants' argument, the requirement to respond in writing to an objection is an affirmative obligation on a designating party who refuses to agree to de-designate Restricted materials. The public disclosure of Restricted information constituted a new basis for the SDC to object to the Restricted designation, and therefore warranted the SDC in serving a new objection to the designation. The question of whether a party could "make an infinite number of requests for the de-designation of the identical restricted materials, even after briefing on such matter has concluded" (Motion to Strike at 3 n. 3) is not presented in this case.

If Multigroup Claimants has an argument as to why the new evidence is not material to the Judges' consideration of the pending motions or why the Judges otherwise should not consider the new evidence, then Multigroup Claimants should present that argument in opposition to the SDC's motion to supplement. There is no basis to strike the SDC's motion simply because Multigroup Claimants opposes the relief requested. It was unnecessary for Multigroup Claimants to initiate yet another round of pleadings by filing a new motion.

Conclusion

The Judges should deny Multigroup Claimants' motion to strike the SDC's motion to supplement.

Date: April 27, 2020

Respectfully submitted,

/s/ Matthew J. MacLean

Matthew J. MacLean (DC Bar No. 479257)

Matthew.MacLean@pillsburylaw.com

Michael A. Warley (DC Bar No. 1028686)

Michael.Warley@pillsburylaw.com

Jessica T. Nyman (D.C. Bar No. 1030613)

Jessica.Nyman@pillsburylaw.com

PILLSBURY WINTHROP SHAW PITTMAN LLP

1200 Seventeenth Street, NW

Washington DC 20036

Tel: (202) 663-8183

Fax: (202) 663-8007

Arnold P. Lutzker (DC Bar No. 108106)

Arnie@lutzker.com

Benjamin Sternberg (DC Bar No. 1016576)

Ben@lutzker.com

LUTZKER & LUTZKER LLP

1233 20th Street, NW, Suite 703

Washington DC 20036

Tel: (202) 408-7600

Fax: (202) 408-7677

Counsel for Settling Devotional Claimants

Certificate of Service

I certify that on April 27, 2020, I caused the foregoing to be served on all parties by filing through the eCRB system.

/s/ Matthew J. MacLean
Matthew J. MacLean

Proof of Delivery

I hereby certify that on Monday, April 27, 2020, I provided a true and correct copy of the Opposition to Multigroup Claimants' Motion to Strike Settling Devotional Claimants' Motion to Supplement to the following:

Joint Sports Claimants (JSC), represented by Michael E Kientzle, served via ESERVICE at michael.kientzle@apks.com

MPA-Represented Program Suppliers (MPA), represented by Gregory O Olaniran, served via ESERVICE at goo@msk.com

National Association of Broadcasters (NAB) aka CTV, represented by John Stewart, served via ESERVICE at jstewart@crowell.com

Public Television Claimants (PTC), represented by Dustin Cho, served via ESERVICE at dcho@cov.com

Multigroup Claimants (MGC), represented by Brian D Boydston, served via ESERVICE at brianb@ix.netcom.com

Canadian Claimants Group, represented by Victor J Cosentino, served via ESERVICE at victor.cosentino@larsongaston.com

Signed: /s/ Matthew J MacLean